05-BR-101

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

August 18, 2005

Chief Justice William H. Rehnquist
United States Supreme Court Building
One First Street, NE
Washington, DC 20543

Dear Chief Justice Rehnquist:

As the principal sponsor of the newly-enacted bankruptcy reform law (Pub. Law 109-8), I am writing to express my concern over certain rules which have been proposed by the Judicial Conference to implement this legislation. In my opinion, the Judicial Conference will play a critical role in ensuring that Public Law 109-8 is implemented in a manner that is fully consistent with Congressional intent. The Rules Enabling Act specifically envisions Congressional involvement with the judicial rule-making process. Accordingly, I am communicating these views in that spirit.

First, I am concerned that the proposed rules would require that creditor motions to dismiss be filed "with particularity". This would impose an unnecessary burden on creditors that has no statutory basis in the new bankruptcy law. A fair reading of the statute and its legislative history clearly indicates that Congress wanted to encourage creditor motions, not unduly hamper them, by removing the prior law's absolute bar to section 707(b) creditor motions. In fact, Congress has already statutorily imposed restrictions on such motions in the new bankruptcy law. *See* Public Law 109-8, Section 102(a); 119 Stat. 30-31 (providing for sanctions for abusive creditor motions under section 707(b)). Creating a new, non-statutory hurdle for creditor motions is unwarranted and clearly contrary to Congress' intent in regulating motions practice under section 707(b).

I am also concerned that the proposed rules do not require debtors to file a certificate that they have completed the pre-discharge education course mandated under the new bankruptcy law, thereby creating a possible loophole for dishonest debtors to evade this important educational requirement. *See* Public Law 109-8, Section 106; 119 Stat. 37. This educational requirement is necessary for the public good because debtors need to learn about sound financial management. Reliance on mere assurances from debtors is not

sufficient to ensure that the educational requirement will serve the purpose that Congress intended, because past experience demonstrates that debtor statements are often unreliable. Thus, by failing to require proof of education as a condition for receiving a discharge, the Judicial Conference would significantly weaken this important component of the new law.

Finally, I am deeply troubled that the proposed bankruptcy rules and forms do not require debtor's counsel to attest, under oath, to the accuracy of a debtor's schedules and statements. Congress deliberately chose to impose new responsibilities on debtor's counsel in consumer cases to deal with fraudulent filings and to maintain the integrity of the entire bankruptcy system. *See* Public Law 109-8, Section 102(a); 119 Stat. 30 (the new law provides that "[t]he signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect"). The absence of any rule specifying how counsel should comply with their new responsibilities is, in my judgment, a serious and substantial oversight that must be corrected.

I understand that Interim Rules and Official Forms may be adopted this month. I believe that the defects that I have outlined above should be corrected before adoption of the Interim Rules in order to appropriately implement the new bankruptcy law.

Thank you for considering my concerns.

Sincerely,

Chuck Grassley

Charles E. Grassley
United States Senator

CC: Thomas S. Zilly (Senior Judge)
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